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The Honorable Thomas O. Rice

7
8 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

9 Firefighters MICHAEL BACON,
ANDREA KERNKAMP, JOE
10 HOWARTH, BRENNAN COOKE, TIM
WHEELER, TOM HARVEY, JOEL
BROSE, TANNER TOWNSEND,
11 CURTIS SMITH, ISAIAH DEAN,
NICHOLAS HOLMES, MATTHEW
NORTON, JHAR FULLER, STEVEN
12 HOWIE, JEFFREY BAXTER, ARIC
PISA, DUANE WILCOX, DAVID
HEIZER, JAMES BILLMAN, MARLIN
13 THORMAN, JASON WEBSTER,
TIMOTHY ARCHER, COREY
14 BARKER, SCOTT MCCANN, and
CONNOR FOXWORTH,

15 Plaintiffs,

16 vs.

17 NADINE WOODWARD, the Mayor of
the City of Spokane, Fire Chief BRIAN
SCHAEFFER, and THE CITY OF
SPOKANE,

18 Defendants.

CASE NO. 2:21-cv-00296-TOR

DECLARATION OF BRIAN
SCHAEFFER

1 I, BRIAN SCHAEFFER, hereby declare as follows:

2 1. I am the Fire Chief for the City of Spokane Fire Department. I am at
3 least 18 years of age and am competent to testify as to the following based upon
4 personal knowledge. I have been a fire fighter for 32 years and have worked for
5 the City since 2005.

6 2. Proclamation 21-14, issued by Governor Inslee on August 9, 2021,
7 prohibits health care, education, and Washington State agency workers from
8 “engaging in work” after October 18 if not “fully vaccinated against COVID-19.”
9 I refer to this as the Vaccine Proclamation. Attached hereto as Exhibit 1 is a true
10 and correct copy of the Vaccine Proclamation dated August 9, 2021.

11 3. The Vaccine Proclamation imposed a new workplace requirement for
12 many, including the City’s Emergency Medical Technicians (EMT) and
13 Paramedics. All EMTs and Paramedics are charged with protecting the life and
14 safety of Spokane residents, who are often the most vulnerable and sick. All the
15 different operational roles in the Fire Department (*e.g.*, Dispatchers, Firefighters,
16 Paramedics, Fire Equipment Operators, Lieutenants, Captains, Battalion Chiefs)
17 have EMT or Paramedic licenses.

18 4. As our department has been dealing with COVID and the Vaccine
19 Proclamation, I have worked closely with and been advised by lawyers to ensure
20 that the department is following the law.

1 5. On August 20, 2021, I sent an email to all personnel of the Spokane
2 Fire Department informing them about the Vaccine Proclamation. Attached hereto
3 as Exhibit 2 is a true and correct copy of the email dated August 20, 2021. In that
4 email, I explained to everyone among other things:

- 5 • the schedule by when EMTs need to get vaccinated to meet
6 Governor's mandate;
- 7 • that they could request an exemption accommodation under state and
8 federal law based on sincerely held religious belief or disability that
9 prevents them from complying with workplace requirement and
10 attached forms for them to do that;
- 11 • the intent to bargain the impacts of the mandate;
- 12 • the process for exemptions, and that if exempt, the City would
13 consider reasonable accommodations based on many factors;
- 14 • the indication that any exemption requests must be submitted by
15 September 3; and
- 16 • "For a religious exemption, the employer must provide a reasonable
17 accommodation unless doing so would cause more than a minimal
18 hardship to the employer or other employees. For a disability
19 accommodation, the threshold is different. The employer must

1 provide a reasonable accommodation that does not impose an undue
2 burden or threat to the safety of the employee and others. We will
3 engage in the accommodation dialogue under this framework and
4 thoroughly evaluate accommodations.”

5 6. On September 27, 2021, Governor Inslee issued an amendment to
6 Proclamation 21-14. Attached hereto as Exhibit 3 is a true and correct copy of the
7 amendment to the Vaccine Proclamation dated September 27, 2021. The
8 amendment indicated that health care setting operators must follow the
9 accommodations processes required by law and are prohibited from providing
10 accommodations that they know are based on false, misleading, or dishonest
11 grounds or information; or based on personal preference. It also said that agencies
12 are likewise prohibited from providing accommodations without “conducting an
13 individualized assessment and determination of each individual’s need and
14 justification for an accommodation, *i.e.*, ‘rubberstamping’ accommodation
15 requests.”

16 7. After considering a variety of factors, the City concluded that due to
17 transmissibility of the Delta variant and high infections in the community, the City
18 was not able to assume the cost and risk of having unvaccinated EMTs and
19 Paramedics continue in their current positions and compromise the safety of the
20

workplace and community members. See Declarations of Meghann Steinolfson, Jay Atwood and Tom Williams.

8. The City's position was communicated on September 23 and on October 1 to the department. Attached hereto as Exhibit 4 is a true and correct copy of the letter sent to the Spokane Fire Department dated September 23, 2021. Attached hereto as Exhibit 5 is a true and correct copy of the letter sent to the Spokane Fire Department dated October 1, 2021.

9. In my September 23, 2021 letter, I outlined the different options for EMTs and Paramedics choosing not to get vaccinated:

- Apply for another job within City for which the Vaccine Proclamation does not apply. The City committed to make a good-faith effort to find the exempt EMTs and Paramedics choosing not to get vaccinated a position through reassignment.
- Essential function layoff.
- Paid leave for those who intend to become fully vaccinated.
- Leave of absence without pay for up to 90 days.
- Resignation.
- Retirement.
- Separation.

1 We are offering paid leave through November 30 in case people want to change
2 their mind and get vaccinated. We are offering leave without pay so they can
3 maintain employment and avoid a termination. We are offering a layoff so they can
4 cash out their leave banks and have recall rights to come back and retain their
5 seniority. It is only if the employee rejects these accommodations, chooses not to
6 be vaccinated, and chooses resignation, retirement, or does not make a decision
7 that he/she is separated.

8 10. We then offered *Loudermill* hearings (notice and an opportunity to be
9 heard). Those occurred on October 11-12 and the decisions on each of those was
10 issued on October 15. The *Loudermill* provided the members an opportunity to
11 provide any additional information the member, their Local 29 representative and
12 attorney wanted to be considered before making a final decision regarding the
13 accommodation dialogue and potential separation for those who had not selected
14 one of the offered accommodations.

15 11. Plaintiffs complain that that unvaccinated Firefighters or EMTs from
16 other departments or AMR will be providing service within the City. The City of
17 Spokane is not the employer of those unvaccinated Firefighters and EMTs. We do
18 not have control over the terms and conditions of their employment. However, we
19 have made it very clear that all reasonable efforts must be made to ensure only
20

1 vaccinated Firefighters and EMTs employed by other entities are providing service
2 within the City.

3 12. The Fire Department has sent letters/emails to its surrounding
4 jurisdictions covered by the automatic aid agreements stating they are not allowed
5 to send unvaccinated EMS personnel into the City's jurisdiction. Attached hereto
6 as Exhibit 6 is a true and correct copy of the letter sent to Spokane Fire District 8
7 Chief Rash dated October 12, 2021. Attached hereto as Exhibit 7 is a true and
8 correct copy of the letter sent to Spokane Fire District 9 Chief Cates dated
9 October 12, 2021. Attached hereto as Exhibit 8 is a true and correct copy of the
10 letter sent to Spokane Valley Fire Chief Collins dated October 12, 2021. Some of
11 the neighboring jurisdictions have signed sworn Contractor Certifications stating
12 that they will use reasonable efforts to send only vaccinated
13 Firefighters/Paramedics to the City for any EMS call. For example, see attached as
14 Exhibit 9 a true and correct copy of the sworn Contractor Certification
15 (Proclamation 21-14 – COVID-19 Vaccination Certification) from Spokane Fire
16 District 3 dated October 22, 2021. District 9 agreed to assign its unvaccinated
17 members to Station 99 effective November 1, 2021 to mitigate the impact to the
18 City as Station 99 has the fewest calls to the City.

19 13. The City of Spokane has three priorities in conducting its analysis
20 regarding all EMTs and Paramedics (including American Medical Response, Inc.

1 (AMR) under the sole source contract): Patient Safety, Employee Safety, and
2 Fiduciary Stewardship. These priorities require the City to find a path to requiring
3 AMR's compliance with the Vaccine Mandate.

4 14. The City of Spokane under the sole source contract currently requires
5 AMR EMTs and Paramedics to have specific training, certification, equipment,
6 and clinical performance. The requirements are audited regularly, and I am
7 responsible for contract compliance. A vaccine requirement is no different.

8 15. My understanding is that AMR's operations in other jurisdictions
9 (such as Seattle) intend to comply with the Vaccine Proclamation. AMR
10 operations in Spokane are maintaining unvaccinated EMTs in their positions
11 because their other customers and hospitals (other than City of Spokane) were not
12 requiring vaccinations for employees requesting an exemption.

13 16. On October 11, 2021, I sent a letter to AMR requiring its compliance
14 with the Vaccine Proclamation. Attached hereto as Exhibit 10 is a true and correct
15 copy of the letter sent to AMR dated October 11, 2021. Attached hereto as Exhibit
16 11 is a true and correct copy of the October 15, 2021 sworn certification from
17 AMR.

18 17. After further discussions with AMR and counsel, AMR's sworn
19 certification was revised to include the following language to minimize that risk:

1 Notwithstanding the foregoing, the undersigned, on behalf of the
2 Contractor commits to use reasonable efforts to not respond with
3 unvaccinated individuals to EMS calls for service in the City of
4 Spokane. When clinically appropriate, the Contractor shall put the
interests of the patient first, e.g., if an unvaccinated crew with an
approved accommodation is closer to a cardiac arrest or other time
critical call, that unvaccinated crew will respond.

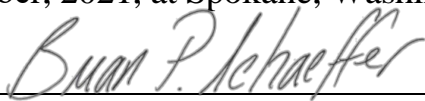
5 Attached hereto as Exhibit 12 is a true and correct copy of the October 22,
6 2021 revised sworn certification from AMR.

7 18. On October 19, I sent an email to the Spokane Fire Department, a true
8 and correct copy of which is attached hereto as Exhibit 12.

9 19. In Washington State there are roughly 400 fire departments.

10 I declare under penalty of perjury under all applicable law that, to the best of
11 my knowledge, information and belief, the foregoing is true and correct.

12 EXECUTED this 1st day of November, 2021, at Spokane, Washington.

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14 Brian Schaeffer

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I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Intervenor-Defendants Jay Inslee and Robert W. Ferguson

1 DATED this 3rd day of November, 2021.

2 *s/ Denise Brandenstein*

3 Denise Brandenstein